IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1902 OF 2004

Dalichand Bhagchand Bafna .. Petitioner.

V/s.

The State of Maharashtra ..Respondent.

Shri V.Z. Kankaria for the Petitioner.
Shri K.V.Saste, APP for the Respondent -State.

CORAM : A.M.KHANWILKAR, J.
DATED : MARCH 03, 2005

PC :-

1. Heard counsel for the parties.

2. Rule. Rule made returnable forthwith by consent. Shri K.V.Saste, APP waives notice for Respondent -State. As short question is involved, the petition is taken up for final disposal forthwith by consent.

3. This petition takes exception to the order passed by the Police Commissioner, Nasik City dated 5th June, 2003, cancelling the licence granted to the petitioner to run Hotel Zankar (Lodging); which order has been confirmed by the Government in exercise of

appellate jurisdiction by order dated 29th July, 2004 in Appeal No. REH-01/03/380/VS-5. Show cause notice was issued to the petitioner, mentioning that, on 3rd August, 2002, his son Kiran Dalichand Bafna was found alongwith other persons in the hotel premises, where prostitution business was going on. The show cause notice also refers to the fact that nearby residents are complaining about the illegal activities in the said hotel. On the basis of that show cause notice, the enquiry proceeded, which concluded with the order passed by the Commissioner of Police on 5th June, 2003. The said order is based on the same reasons, which are referred to in the show cause notice. The matter was carried in appeal by the petitioner. Several contentions were raised in the appeal; but the appeal also came to be dismissed on 29th July, 2004 by the appellate authority. Both these orders are the subject matter of challenge in this petition. Several points have been raised before me but suffice it to advert to one of the contentions which, to my mind, is sufficient for allowing the present application.

4. It is argued on behalf of the petitioner that neither the show cause notice nor the order as passed

by the Commissioner of Police refers to any specific material collected or on which basis the proposed action of cancelling the licence of the hotel, was founded. It is then argued that merely because some criminal complaint has been registered with the police about the incident of 3rd August, 2002 by itself, cannot be the basis to proceed to cancel the licence. To buttress this contention, reliance is placed on the decision of our High Court 1986 (3) Bom. C.R. -714 in the case of Kana Nagu Mhatre vs. The Assistant Commissioner of Police.

5. The fact situation in the said reported case and the case at hand is almost identical. Even in that case no reference to any specific material was made in the order as passed by the competent authority. Besides, the competent authority proceeded on the assumption that all charges pending against the petitioner in that case in the criminal court, including the last in the series, have been proved. Even in the present case, neither any specific material has been mentioned in the show cause notice or the impugned order. More over, the authorities have proceeded on the assumption that the charge, in respect of the case pertaining to the incident of 3rd

August, 2002, has been proved. Thus the impugned action, applying the principles expounded in the case of Kana Nagu Mhatre (Supra), cannot be sustained.

6. Accordingly, this petition ought to succeed by setting aside the impugned orders. However, while doing so, it is made clear that, it will be open to the concerned authorities to proceed against the petitioner on material, which is otherwise available, by following appropriate procedure, as may be advised and permissible by law That option is left open.

7. The petition is disposed of in the above terms.

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